

#### **§ 4.423**

filing or serving any document in a contest.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 15117, Aug. 13, 1971]

#### **§ 4.423 Subpoena power and witness provisions.**

The administrative law judge is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers, for the purpose of taking testimony but not for discovery. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the Act of January 31, 1903 (43 U.S.C. 102-106), and 28 U.S.C. 1821.

#### **HEARINGS ON APPEALS INVOLVING QUESTIONS OF FACT**

#### **§ 4.430 Prehearing conferences.**

(a) The administrative law judge may, in his discretion, on his own motion or motion of one of the parties or of the Bureau direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings.

(b) The administrative law judge shall issue an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the administrative law judge unless modified for good cause, by subsequent order.

#### **§ 4.431 Fixing of place and date for hearing; notice.**

The administrative law judge shall fix a place and date for the hearing and notify all parties and the Bureau. All hearings held in connection with land selection appeals arising under the Alaska Native Claims Settlement Act, as amended, shall be conducted within

#### **43 CFR Subtitle A (10-1-02 Edition)**

the State of Alaska, unless the parties agree otherwise.

[47 FR 26392, June 18, 1982]

#### **§ 4.432 Postponements.**

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the administrative law judge at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

#### **§ 4.433 Authority of the administrative law judge.**

The administrative law judge is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause